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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA

8
9 Marcos Antonio Lomeli,

10 Petitioner,

11 vs.

12 Eric H. Holder, Jr., Attorney General

13 Respondent.

No. CV-11-02340-PHX-NVW

**FINDINGS OF FACT,
CONCLUSIONS OF LAW, and
ORDER**

14 This case was referred to this Court pursuant to 8 U.S.C. § 1252(b)(5)(B) for the
15 limited purpose of making a judicial determination regarding Petitioner's disputed claim
16 of United States citizenship. The relevant law and many of the relevant facts are not
17 disputed.

18 The parties agree that the relevant law for determining whether an individual has
19 acquired United States citizenship is the law in effect at the time of the person's birth. In
20 order to establish he acquired citizenship through his mother, Petitioner bears the burden
21 to establish his mother was physically present in the United States for ten years between
22 her date of birth, December 11, 1930, and prior to Petitioner's date of birth, April 24,
23 1955. 8 U.S.C. § 1401(a)(7) (1952). In order to establish he acquired citizenship through
24 his mother, Petitioner must additionally establish Ms. Lomeli was physically present in
25 the United States for five years between her fourteenth birthday, December 11, 1944, and
26 Petitioner's date of birth, April 24, 1955. 8 U.S.C. § 1401(a)(7) (1952).

27 On May 16, 2013, an evidentiary hearing was held during which Petitioner
28 testified and the Court made evidentiary rulings and findings on the record in open court.

1 The following findings of fact and conclusions of law supplement, but do not alter, those
2 made on the record.

3 **I. FINDINGS OF FACT**

- 4 1. Petitioner's mother, Raquel Lopez Lomeli ("Ms. Lomeli") was born in
5 Lincoln, California, on December 11, 1930.
- 6 2. Ms. Lomeli moved to Guadalajara, Jalisco, Mexico, with her mother and
7 three elder siblings no later than 1932.
- 8 3. Ms. Lomeli's younger sister, Isabel Lopez (a.k.a. "Isabel Estrada"), was
9 born in Guadalajara, Mexico, in 1935.
- 10 4. Ms. Lomeli's younger sister, Maria Lopez (a.k.a. "Maria Garcia"), was
11 born in Guadalajara, Mexico, in 1938.
- 12 5. Ms. Lomeli's cousin, Bertha Guzman, was born in Guadalajara, Mexico, on
13 September 22, 1938.
- 14 6. Ms. Lomeli's younger brother, Jose Ociel Lopez, was born in Guadalajara,
15 Mexico, in 1942.
- 16 7. Ms. Lomeli's youngest sibling, Salvador Lopez (a.k.a. "Chavito") was born
17 in Guadalajara, Mexico, in 1946, and was handicapped.
- 18 8. From 1932 until her marriage in 1951, Ms. Lomeli resided with her mother
19 and siblings in their three bedroom family home in Guadalajara, Mexico.
- 20 9. Ms. Lomeli's family home in Mexico was located at 1026 Federation,
21 Sector Liberty, Guadalajara, Jalisco, Mexico.
- 22 10. While living at 1026 Federation, Sector Liberty, Ms. Lomeli slept in one
23 bedroom with her sisters, Isabel Estrada and Maria Garcia.
- 24 11. At their home at 1026 Federation, Sector Liberty, Guadalajara, Jalisco,
25 Mexico, the Lomeli family also owned a shoe shop where they made and
26 sold shoes.
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12. Ms. Bertha Guzman worked at the Lomeli family's shoe shop in Sector Liberty, Guadalajara, Jalisco, Mexico, from 1947 until 1953, and saw Ms. Lomeli at the Lomeli family home almost every day.
13. Ms. Lomeli married Salvador Lomeli ("Mr. Lomeli") in a civil ceremony on April 20, 1951, and a religious ceremony on May 13, 1951, in Guadalajara, Mexico.
14. From the date of her marriage in 1951 through the date of Petitioner's birth in 1955, Ms. Lomeli's primary residence was in Mexico.
15. After their marriage in 1951, Mr. and Ms. Lomeli rented a home near Ms. Lomeli's family home in Sector Liberty, Guadalajara, Jalisco, Mexico.
16. Petitioner's elder brother, Aurelio Lomeli, was born in Mexico on March 6, 1952.
17. Petitioner's elder sister, Maria Raquel Lomeli, was born in Mexico on July 29, 1953.
18. In 1953, Ms. Lomeli lived in Tijuana and worked in the fields in the United States for varying hours during the day for nine to ten months.
19. In 1954, Ms. Lomeli was physically present in Oxnard, California for nearly one year.
20. The number of hours that Ms. Lomeli worked in the United States between 1951 and 1955 did not amount to five years of physical presence.
21. Petitioner Marcos Antonio Lomeli ("Mr. Lomeli" or "Petitioner") was born in Guadalajara, Mexico, on April 24, 1955.
22. Petitioner's younger sister, Maria Alejandrina Lomeli Lopez, was born in Mexico on November 26, 1956.
23. Petitioner's younger sister, Silvina Lomeli, was born in Mexico on March 13, 1959.

- 1 24. Ms. Lomeli, Salvador Lomeli, Petitioner and his sisters entered the United
- 2 States in 1960.
- 3 25. In 1968, Plaintiff's mother filed an N-600 Application for Certificate of
- 4 Citizenship on Petitioner's behalf.
- 5 26. On May 13, 1968, an officer of the United States Immigration and
- 6 Naturalization Service ("INS") interviewed Ms. Lomeli, under oath,
- 7 concerning her Application for a Certificate of Citizenship on Petitioner's
- 8 behalf.
- 9 27. During the interview, Ms. Lomeli testified, under oath, she moved from the
- 10 United States to Mexico in 1932, worked in the United States in 1953 for
- 11 nine or ten months, and lived in Oxnard, California for almost a year in
- 12 1954.
- 13 28. Following the interview, the INS denied Ms. Lomeli's application for an N-
- 14 600 Certificate of Citizenship on Petitioner's behalf on June 20, 1968.
- 15 29. Petitioner filed a second N-600 Application for Certificate of Citizenship
- 16 on November 22, 1991.
- 17 30. The INS denied Petitioner's second N-600 Application on September 15,
- 18 1994.
- 19 31. On December 9, 1992, Petitioner filed an Application for Adjustment of
- 20 Status to register as a Legal Permanent Resident under 8 U.S.C. § 1259.
- 21 32. The INS denied Petitioner's application to register as a Legal Permanent
- 22 Resident on August 13, 1993, for lack of good moral character.
- 23 33. Petitioner entered criminal custody in 1998 and was released in 2004.
- 24 34. On June 14, 2006, Petitioner filed his third N-600 Application for
- 25 Certificate of Citizenship on June 14, 2006.
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1 35. The United States Citizenship and Immigration Service (“USCIS”) denied
2 Petitioner’s third N-600 Application for Certificate of Citizenship on
3 November 9, 2006.

4 36. The Department of Homeland Security initiated removal proceedings
5 against Petitioner, by serving him with a Notice To Appear and charging
6 him with removability on November 9, 2006.

7 **II. CONCLUSIONS OF LAW**

- 8 1. Petitioner failed to establish by a preponderance of the evidence that his
9 mother was physically present in the United States for ten years between
10 her date of birth, December 11, 1930, and prior to Petitioner’s date of birth,
11 April 24, 1955. *See* 8 U.S.C. § 1401(a)(7) (1952).
- 12 2. Petitioner failed to establish by a preponderance of the evidence that
13 Ms. Lomeli was physically present in the United States for five years
14 between her fourteenth birthday, December 11, 1944, and Petitioner’s date
15 of birth, April 24, 1955. *See* 8 U.S.C. § 1401(a)(7) (1952).
- 16 3. Petitioner did not acquire United States citizenship through his mother
17 pursuant to 8 U.S.C. § 1401(a)(7) (1952), because Ms. Lomeli lacked the
18 requisite physical presence in the United States prior to Petitioner’s birth.
- 19 4. The Court lacks authority to confer United States citizenship on Petitioner
20 through any equitable means such as estoppel or laches.
- 21 5. Even if the Court had the authority to confer United States citizenship
22 through equitable means, which it does not, Petitioner failed to establish
23 Alexander Gonzalez’s (“Mr. Gonzalez”) decision not to issue a detainer for
24 Petitioner constituted affirmative misconduct, where Mr. Gonzalez’s
25 authority was limited to determining whether to place Petitioner in
26 immigration detention under 8 C.F.R. § 287.7.
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